

EXHIBIT S

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May 5, 2022

UNITED STATES DISTRICT COURT OF THE
SOUTHERN DISTRICT OF NEW YORK

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ADMIRAL INSURANCE COMPANY,

Plaintiff,

DOCKET No.

7:21-cv-02460-NSR

-against-

BUILDERS CHOICE OF NEW YORK,
INC., D/B/A UPSTATE ROOFING
AND SIDING AND POLIVIO
VALDIVIESO,

Defendants.

----- x
EXAMINATION BEFORE TRIAL of the Defendant,
BUILDERS CHOICE OF NEW YORK, INC., by WOLF
WERCBERGER, taken by the Plaintiff, pursuant to
Order, held on VC LEXITAS-LegalView,
LEXITAS-LEGALVIEW VC One-Click Link Entry Provided
REMOTE VIDEOCONFERENCE VC, on May 5, 2022, at 11:07
a.m., before a Notary Public of the State of New
York.



1
2 A P P E A R A N C E S: (VIA VIDEOCONFERENCE)

3 PILLINGER MILLER TARALLO, LLP

Attorneys for Plaintiff

4 ADMIRAL INSURANCE COMPANY

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5 Elmsford, New York 10523

6 BY: GEORGE MANIATIS, ESQ.

7
8 LERNER, ARNOLD & WINSTON, LLP

Attorneys for Defendant

BUILDERS CHOICE OF NEW YORK,

9 INC., D/B/A UPSTATE ROOFING

AND SIDING AND POLIVIO

10 VALDIVIESO

475 Park Avenue South, 28th Floor

11 New York, New York 10016

12 BY: SEAN MCALOON, ESQ.

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1 S T I P U L A T I O N S

2 IT IS HEREBY STIPULATED AND AGREED by and
3 between the attorneys for the respective parties
4 herein, that filing, sealing and certification, and
5 the same are, hereby waived.

6 IT IS FURTHER STIPULATED AND AGREED that all
7 objections except as to the form of the question,
8 shall be reserved to the time of the trial.

9 IT IS FURTHER STIPULATED AND AGREED that the
10 within deposition may be signed and sworn to by an
11 officer authorized to administer an oath, with the
12 same force and effect as if signed and sworn to
13 before the Court.

14 xxxxxx
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1 IT IS HEREBY STIPULATED AND AGREED by and
2 between counsel for all parties present that
3 pursuant to CPLR section 3113(d) this deposition is
4 to be conducted by video conference, that the court
5 reporter, all counsel, and the witness are all in
6 separate remote locations and participating via
7 videoconference (LegalView/Zoom) meeting under the
8 control of Lexitas Court Reporting Service, that the
9 officer administering the oath to the
10 witness need not be in the place of the deposition
11 and the witness shall be sworn in remotely by the
12 court reporter after confirming the witness's
13 identity, that this videoconference will not be
14 recorded in any manner and that any recording
15 without the express written consent of all parties
16 shall be considered unauthorized, in violation of
17 law, and shall not be used for any purpose in this
18 litigation or otherwise.
19

20 IT IS FURTHER STIPULATED that exhibits may be
21 marked by the attorney presenting the exhibit to the
22 witness, and that a copy of any exhibit presented to
23 a witness shall be Emailed to or otherwise in
24 possession of all counsel prior to any questioning
25 of a witness regarding the exhibit in question. All
parties shall bear their own costs in the conduct of
this deposition by video conference, not
withstanding the obligation by CPLR to supply a copy
of the transcript to the deposed party by the taking
party in civil litigation matters.

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1 Wolf Wercberger

2 W O L F W E R C B E R G E R, Having first affirmed
3 before a Notary Public of the State of New York, was
4 examined and testified as follows.

5 EXAMINATION BY

6 MR. MANIATIS:

7 Q What is your name?

8 A **Wolf Wercberger.**

9 Q What is your address?

10 A **149 Elm Street, Unit 101, Monroe, New**
11 **York, 10950.**

12 Q. Good morning. My name is George
13 Maniatis from Pillinger Miller Tarallo and I
14 represent Admiral Insurance Company in this
15 declaratory judgment action. I'm going to
16 ask you some questions today regarding this
17 lawsuit.

18 Just a few ground rules, you have to
19 give a verbal response to my questions
20 because the court reporter can't take down
21 the nod of the head or a shrug.

22 I would just ask you to wait until I
23 complete the question before you answer it
24 because if we talk over each other the record
25 will be kind of confused and the court

1 Wolf Wercberger

2 reporter will have difficulty taking down
3 both our responses at the same time.

4 Unless you ask me to repeat or
5 rephrase a question, I'll assume that you
6 understand the question.

7 If you need a break for any reason
8 just let me know, I'll just ask that we wait
9 until the question is finished and there's no
10 question pending before you take the break.

11 Since we're on a video deposition I
12 can't really see you, I just request that you
13 don't text or talk to anyone regarding the
14 substance of this deposition including your
15 counsel. If you need to speak to your
16 counsel, we'll ask for a break and you can
17 speak to counsel on the break.

18 Do you understand those instructions
19 that I gave?

20 **A. Yes.**

21 **Q. What is your business address,**
22 **Mr. Wercberger?**

23 **A. 149 Elm Street, Unit 101, Monroe, New**
24 **York, 10950.**

25 **Q. Have you ever been deposed before,**

1 Wolf Wercberger
2 have you ever given a deposition like this
3 before?

4 **A. Yes.**

5 Q. On how many occasions?

6 **A. If I remember correctly, two.**

7 Q. Was one of those depositions that you
8 gave in the underlying Valdivieso action?

9 **A. Yes.**

10 MR. MANIATIS: Sean, I'm just
11 going to request a copy of that
12 transcript when becomes available.

13 (REQUEST NOTED)

14 MR. MCALOON: Sure thing, I've
15 been trying to obtain a copy myself,
16 I'll send it to you as soon as I have
17 it.

18 MR. MANIATIS: Thank you very
19 much.

20 Q. What did you do to prepare for today's
21 deposition?

22 **A. Drank a coffee.**

23 Q. Did you review any documents in
24 preparation for your testimony today?

25 **A. No.**

1 **Wolf Wercberger**

2 Q. Did you confer with counsel? And
3 again, don't disclose any discussions that
4 you had with counsel.

5 **A. Yes.**

6 Q. In addition to counsel, did you
7 discuss the substance of today's deposition
8 with anyone else?

9 **A. No.**

10 Q. Who is your current employer?

11 **A. Builders Choice of New York D/B/A**
12 **Upstate Roofing and Siding.**

13 Q. We'll get into that in a second.

14 What is your current position with
15 Builders Choice?

16 **A. Manager.**

17 Q. How long have you held the position of
18 manager at Builders Choice?

19 **A. Nineteen years.**

20 Q. Have you been a manager that entire
21 time?

22 **A. Yes.**

23 Q. Has there been any other change in
24 either your position or your duties and
25 responsibilities during that 19 years?

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1 Wolf Wercberger

2 **A. Yes.**

3 Q. Can you describe what those changes
4 were?

5 **A. There's more work, there's more**
6 **liabilities.**

7 Q. What type of organization is Builders
8 Choice of New York?

9 **A. Roofing and siding company.**

10 Q. Is it incorporated in New York, a
11 limited liability company or something else?

12 **A. Incorporated in New York.**

13 Q. How many shareholders are there
14 currently in Builders Choice?

15 **A. None.**

16 Q. Do you have any financial ownership in
17 Builders Choice?

18 **A. No.**

19 Q. Who is the financial owner of Builders
20 Choice, if anyone?

21 **A. Berish Schonbrun.**

22 Q. That would be the name that we see
23 under --

24 **A. He's the president of the company.**

25 Q. When was Builders Choice formed?

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1 Wolf Wercberger

2 **A. Don't know.**

3 Q. Was it formed prior to the 19-years
4 you've been working there?

5 **A. Yes.**

6 Q. How many employees are there of
7 Builders Choice currently?

8 **A. Employees, 12 employees.**

9 Q. Has that number changed since February
10 of 2020?

11 **A. On and off.**

12 Q. Who are the officers of Builders
13 Choice currently?

14 **A. By saying officers I don't understand
15 the question.**

16 Q. Okay, I'm just looking -- did you say
17 you don't know who the shareholders were or
18 that there aren't any shareholders?

19 **A. I said there aren't shareholders,
20 there's only a president, Berish Schonbrun.**

21 Q. Who do you report to currently?

22 **A. Myself.**

23 Q. You don't record to Mr. Schonbrun?

24 **A. No.**

25 Q. Can you just describe generally what

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1 Wolf Wercberger

2 type of employees the 12 employs are, are
3 they workers?

4 **A. Mostly office workers.**

5 Q. You mentioned Upstate Roofing and
6 Siding, is that a separately incorporated
7 business --

8 **A. No.**

9 Q. -- from Builders Choice?

10 **A. No.**

11 Q. Do you have an understanding as to why
12 Upstate Roofing and Siding was formed?

13 **A. No.**

14 Q. Do you know why Builders Choice is
15 doing business as Upstate Roofing and Siding?

16 **A. It's the opposite. Builders Choice is**
17 **the company and we do business as Upstate**
18 **Roofing and Siding.**

19 Q. How long have you been doing business
20 as Upstate?

21 **A. Since I worked for the company.**

22 Q. Does Upstate have any separate
23 employees or ownership as far as you know?

24 **A. No.**

25 Q. In February 2020, what were your

1 Wolf Werberger

2 duties and responsibilities as manager at
3 Builders Choice?

4 **A. Same as today.**

5 Q. What are those duties and
6 responsibilities?

7 **A. Getting a job, getting a subcontractor**
8 **to do the job.**

9 Q. How many construction projects were
10 Builders Choice involved with in February of
11 2020?

12 **A. Don't know.**

13 Q. Do you know how many different
14 subcontractors Builders Choice used in
15 February 2020?

16 **A. Don't know.**

17 Q. Are you familiar with an entity known
18 as Exterior Pro Builders?

19 **A. Yes.**

20 Q. What is the business of Exterior Pro?

21 **A. They did for us roofing as a**
22 **subcontractor.**

23 Q. On how many projects, construction
24 projects has Builders Choice used Exterior
25 Pro?

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1 Wolf Wercberger

2 **A. Don't know.**

3 Q. Was it more than just the 10 Quickway
4 Road project?

5 **A. Yes.**

6 Q. Do you recall when Builders Choice
7 first hired Exterior Pro to use as a
8 subcontractor?

9 **A. Don't know.**

10 Q. Had Builders Choice used Exterior Pro
11 as a subcontractor prior to the 10 Quickway
12 Road project?

13 **A. Yes.**

14 Q. What is the business of Builders
15 Choice of New York?

16 **A. You had asked this question before.**

17 Q. Did I?

18 **A. Yes.**

19 Q. Okay, I apologize.

20 Can you please briefly describe your
21 educational background?

22 **A. Excuse me?**

23 Q. Can you briefly summarize your
24 educational background?

25 **A. Which college I was?**

1 **Wolf Werchberger**

2 Q. Yes.

3 **A. UTA.**

4 Q. What does that stand for?

5 **A. It's a seminar, it's a college.**

6 **United Talmudical Academy.**

7 Q. Did you obtain any degree from that
8 institution?

9 MR. MCALOON: Wolf, did you
10 hear the question?

11 THE WITNESS: He wants to know
12 which kind of degree I got.

13 MR. MCALOON: Yes.

14 **A. Bachelor degree.**

15 Q. In what subject?

16 Let me phrase it this way, did you
17 have any -- did you obtain any degree in
18 either architecture or construction
19 management or anything of that nature?

20 **A. Construction management.**

21 MR. MCALOON: Wolf, did you
22 answer, I don't think we heard you.

23 THE WITNESS: I said
24 construction management.

25 Q. What year did you get your bachelor's

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1 Wolf Werberger
2 degree?
3 **A. Don't know.**
4 Q. Prior to working for Builders Choice,
5 did you have any other employment?
6 **A. No.**
7 Q. After you obtained your degree, did
8 you have any training in either construction
9 management, building or anything of that
10 nature?
11 **A. OSHA safety.**
12 Q. In addition to the OSHA safety, do you
13 have any professional licenses or
14 certifications?
15 **A. I don't understand the question.**
16 Q. Sure.
17 Do you have any licenses with the
18 State of New York either like an engineering
19 or --
20 **A. No.**
21 Q. -- architecture, anything of that
22 nature?
23 **A. No.**
24 Q. Can you see that?
25 (Whereupon, a document

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1 Wolf Werchberger

2 is shared with all parties via
3 videoconference.)

4 Q. What has been previously marked as
5 Exhibit C is a subcontract agreement rider,
6 have you ever seen a copy of this document
7 before?

8 A. **Yes, this is what I did with the**
9 **contractor of the job site.**

10 Q. On page two that we're looking at, is
11 that your signature?

12 A. **Yes.**

13 Q. Can you just briefly describe what
14 this document is?

15 A. **A document that the contractor who**
16 **contract to us to do the roofing and siding**
17 **made me sign.**

18 Q. Who is Noam Yheuda Management?

19 A. **Zalman Weiss.**

20 Q. That's his signature on the bottom of
21 the contract?

22 A. **Yes.**

23 Q. What is the business of Noam Yheuda
24 Management?

25 A. **I don't understand the question.**

1 **Wolf Wercberger**

2 Q. Sure.

3 Are they an owner of real property,
4 are they --

5 A. **I have no idea.**

6 Q. -- general contractor or anything of
7 that nature?

8 A. **I have no idea if he owns the property**
9 **or not, he's the one that called us for the**
10 **work at 10 Quickway.**

11 Q. This agreement, let me ask you, had
12 you done any work with Noam prior to signing
13 this contract?

14 A. **Yes. Prior to signing the contract,**
15 **no.**

16 Q. I'm looking, the contract is dated
17 January 5, 2019?

18 A. **Yes.**

19 Q. Is it fair to say that you had other
20 construction projects with Noam prior to the
21 10 Quickway Road project?

22 A. **Yes.**

23 Q. How many projects did you have with
24 them prior to the project at 10 Quickway
25 Road?

1 Wolf Wercberger

2 **A. I don't know.**

3 Q. This agreement, is this agreement
4 applicable to a particular job site or this
5 is just a general agreement with him?

6 **A. General agreement.**

7 Q. You see on the top it says subcontract
8 agreement rider, is there another general
9 agreement that you have with Noam in effect?

10 **A. I don't believe so since I supplied**
11 **that already everything what they asked,**
12 **maybe you have some other documents, but.**

13 Q. Were you involved in the negotiation
14 with this subcontract rider?

15 **A. The rider, no, it's a general paper.**

16 Q. It's a standard subcontract agreement
17 rider that Noam had asked to you sign?

18 **A. Yes.**

19 Q. And there was no change to the
20 original subcontract agreement rider form
21 that you had asked to be made in connection
22 with this?

23 **A. No.**

24 Q. Were you working on other projects
25 with Noam at the time you were working at the

1 Wolf Wercberger

2 10 Quickway Road project?

3 **A. I don't know.**

4 Q. Do you know if any subsequent
5 subcontract rider agreements were entered
6 into with Noam?

7 **A. Again.**

8 Q. Sure.
9 Do you know if there were any
10 additional or subsequent contract rider
11 agreements that you entered into with Noam
12 after January 5, 2019?

13 **A. Don't know.**

14 Q. Section 2 of the -- excuse me, Section
15 1 of the agreement contains an indemnity
16 provision, do you recall any discussions with
17 anyone at Noam regarding the indemnity
18 provision in Section 1?

19 **A. Discussion like what?**

20 Q. What it means, what you're obligated
21 to do, anything of that nature.

22 **A. Our obligation is to follow safety**
23 **rules with OSHA.**

24 Q. But I'm referring now specifically to
25 Section 1 indemnity, do you have an

1 Wolf Wercberger
2 understanding as to what that section means
3 to you?

4 MR. MCALOON: Note my
5 objection. The document speaks for
6 itself, you can answer, Wolf.

7 THE WITNESS: Excuse me?

8 MR. MCALOON: You can answer
9 over my objection.

10 THE WITNESS: Can you please
11 repeat? Sean? What did you say Sean?

12 MR. MCALOON: I made an
13 objection, but I'm allowing you to
14 answer. George I think you should
15 repeat the question.

16 MR. MANIATIS: Sure.

17 Q. Do you have an understanding as to
18 what Section 1, the indemnity agreement,
19 indemnity section to the subcontract rider
20 agreement is?

21 **A. No.**

22 Q. Referring to Section 2, insurance, did
23 you have any discussions with anyone at Noam
24 regarding this section?

25 **A. I had to supply them with certificates**

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1 **Wolf Wercberger**

2 **of insurance.**

3 Q. Under this provision, who were you
4 required to name as additional insureds?

5 **A. Noam Yheuda.**

6 Q. It says owner, do you know what the
7 owner referred to there is?

8 **A. No.**

9 Q. Turning to Section 2.2, it says the
10 subcontractor, that's Builders Choice,
11 correct?

12 **A. Noam Yheuda is Builders Choice**
13 **subcontractor, yes.**

14 Q. The coverage provided under the
15 commercial general liability policy shall be
16 written on an occurrence basis with coverages
17 brought as the Insurance Services Inc. form
18 and that no policy provision shall restrict,
19 reduce, limit or otherwise impair contractual
20 liability coverage or the contractors, owners
21 or others as required and is listed below
22 status as additional insurance.

23 Do you have an understanding as to
24 what that section refers to?

25 MR. MCALOON: Note my

1 Wolf Wercberger

2 objection, the document speaks for
3 itself. You can answer, Wolf.

4 **A. The only item I know that I have to**
5 **give a certificate of insurance with name,**
6 **the contractor as additional insured. This**
7 **is the standard requirement which every**
8 **single customer is asking, but what the words**
9 **mean, I have no clue.**

10 Q. Referring to item 2.7, do you recall
11 any discussions with Noam regarding Section
12 2.7?

13 **A. It says the subcontractor has to give**
14 **me insurance.**

15 Q. It's the affirmative duty of the
16 subcontractor, that's you, to insure that any
17 sub subcontractor complies with the insurance
18 and indemnification requirements of this
19 contract agreement.

20 What steps would you take to insure
21 that any sub subcontractor that you hired
22 would comply with the insurance requirements
23 in this agreement.

24 **A. I ask them the same, I ask from them a**
25 **liability insurance certificate naming my**

1 **Wolf Werberger**

2 **company name as additional insured.**

3 Q. Did you ever provide a copy of this
4 subcontract agreement rider to Exterior Pro?

5 A. **This one not, but I have my own.**

6 Q. In addition to the subcontract
7 agreement rider, are there any other
8 agreements or contracts entered into between
9 Noam and Builders Choice regarding the 10
10 Quickway project?

11 A. **Not that I recall.**

12 Q. I'm going to show what you we
13 previously marked as Exhibit D, a standard
14 form agreement between Builders Choice of New
15 York and subcontractor.

16 (Whereupon, Exhibit D is shared
17 with all parties via videoconference.)

18 Q. Have you seen a copy of that agreement
19 prior to today?

20 A. **Yes.**

21 Q. Whose signature is on the bottom of
22 the page under Builders Choice?

23 A. **Berish Schonbrun.**

24 Q. Can you describe what this document
25 is?

1 Wolf Wercberger

2 **A. An agreement we signed with every**
3 **subcontractor.**

4 Q. Is this agreement particular to the 10
5 Quickway project or is it just a general
6 agreement for all projects?

7 **A. General agreement to all projects.**

8 Q. And the agreement was dated January 1,
9 2020, do you know if there were any
10 agreements that preceded January 1, 2020
11 between Builders Choice and Exterior Pro
12 Builders?

13 **A. If they did work for us, there is an**
14 **agreement prior, but I have to recheck.**

15 Q. Did they execute this standard form of
16 agreement for every separate project that
17 they did work for you on, when I say they, I
18 mean Exterior Pro?

19 **A. No.**

20 Q. So if, for example, they were working
21 on two or three projects as of January 1,
22 2020, this agreement would cover all of those
23 projects?

24 **A. Yes.**

25 Q. Who signed the agreement on behalf of

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1 Wolf Wercberger
2 Exterior Pro?
3 **A. I believe Manny.**
4 Q. Can you repeat that?
5 **A. I believe the gentleman that has to**
6 **sign for Exterior Pro, who the name is I have**
7 **no idea. I dealt with one gentleman, Manny.**
8 Q. Can you spell that?
9 **A. Manny.**
10 Q. Manny?
11 **A. Yeah.**
12 Q. That's his first name?
13 **A. Yes.**
14 Q. Did you have any involvement in the
15 drafting of this agreement on behalf of
16 Builders Choice?
17 **A. I don't recall.**
18 Q. Do you recall any discussions that you
19 may have had with anyone at Exterior Pro
20 regarding this agreement?
21 **A. I told them they have to sign it.**
22 Q. And you told this to Manny?
23 **A. Yes.**
24 Q. Did you present this agreement to
25 Exterior Pro for their signature?

1 Wolf Werchberger

2 **A. Yes.**

3 Q. Had they requested any changes in the
4 wording of the agreement prior to signing it?

5 **A. No.**

6 Q. Prior to the signing of this
7 agreement, did Builders Choice hire Exterior
8 Pro as a subcontractor for other projects?

9 **A. No. Sorry, one second. Ask the**
10 **question again, please.**

11 Q. Sure.

12 Prior to the signing of this agreement
13 on January 1, 2020, had Builders Choice hired
14 Exterior Pro as a subcontractor on other
15 projects?

16 **A. So again, before I start a job with**
17 **any subcontractor, they have to sign this**
18 **agreement. If subcontractor that doesn't**
19 **want to sign this agreement is no working for**
20 **us.**

21 Q. Does this document refresh your
22 recollection as to when Exterior Pro was
23 first hired as a subcontractor by Builders
24 Choice?

25 **A. No.**

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1 **Wolf Wercberger**

2 Q. But the 10 Quickway Road project was
3 not the first project that Exterior Pro acted
4 as your subcontractor; is that correct?

5 **A. Correct.**

6 Q. You said this standard form agreement
7 was used by Builders Choice in connection
8 with every subcontractor they hired?

9 **A. Yes.**

10 Q. In January 2020, how many different
11 subcontractors was Builders Choice using?

12 **A. I have no idea.**

13 Q. Did this standard form agreement
14 between Builders Choice Exterior Pro cover
15 the work that was being performed at 10
16 Quickway Road?

17 **A. Yes.**

18 Q. Did Builders Choice retain any other
19 subcontractors for the 10 Quickway Road
20 project?

21 **A. Yes.**

22 Q. How many subcontractors did they
23 retain?

24 **A. No idea.**

25 Q. What type of subcontractors did they

1 Wolf Wercberger

2 retain, what type of work did these
3 subcontractors do?

4 **A. Roofing and siding.**

5 Q. That was in connection with the 10
6 Quickway Road project?

7 **A. Please explain your question.**

8 Q. Sure.

9 Is it correct that Builders Choice had
10 hired other subcontractors for roofing and
11 siding work in connection with the 10
12 Quickway Road project?

13 **A. So you asked this question a minute**
14 **ago and I said yes.**

15 Q. Okay.

16 Article 1 contains an indemnification
17 provision, did you have any discussions with
18 anyone at Exterior Pro regarding the meaning
19 or interpretation of this indemnification
20 provision?

21 **A. No. I gave them the document, they**
22 **signed it.**

23 Q. Do you know who drafted this
24 indemnification provision?

25 **A. This is our standard agreement we do**

1 **Wolf Werchberger**

2 **with each subcontractor.**

3 Q. In Article 2.0 insurance requirements,
4 do you recall any discussions that you may
5 have had with Exterior Pro regarding the
6 insurance requirements?

7 **A. I asked them for certificates.**

8 Q. In addition to the standard form
9 agreement between Builders Choice of New York
10 Exterior Pro, are there any other written
11 contracts or agreement involving or covering
12 the work that Exterior Pro was to perform at
13 10 Quickway Road?

14 **A. No.**

15 Q. Did Exterior Pro issue invoices to
16 Builders Choice in connection with the work
17 that they performed at 10 Quickway Road?

18 **A. Don't know.**

19 Q. How is Exterior Pro paid for their
20 time in connection with the 10 Quickway Road
21 project?

22 **A. By check.**

23 Q. By check, but how did Builders Choice
24 know how much to pay them?

25 **A. Can you please ask your question**

1 **Wolf Wercberger**

2 **again?**

3 Q. Sure.

4 My initial question was whether or not
5 Exterior Pro submitted invoices to Builders
6 Choice and you said you didn't know; is that
7 correct?

8 **A. Correct. Usually how we work is we**
9 **work by job, meaning that on squares that's**
10 **getting installed, we pay per square that's**
11 **getting installed. Sometimes we have guys**
12 **working for us, for example, Exterior Pro**
13 **brought to us guys so-and-so guys for such**
14 **and such amount of money. So, for example,**
15 **if he brings let's say five guys, I would pay**
16 **him for the day, for example, I'm just a**
17 **guess, five times \$375.**

18 Q. When Exterior Pro was first hired for
19 the 10 Quickway project, was there an agreed
20 contract price how much they would be paid
21 for their work?

22 **A. No.**

23 Q. It was based on time and materials?

24 **A. Not materials since materials we are**
25 **supplying to our vendors.**

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1 **Wolf Wercberger**

2 Q. So it's based upon the time that they
3 spent there and number of employees?

4 **A. Depends which day they did jobs.**

5 Q. How often would they be paid?

6 **A. Usually I'm trying to pay every one**
7 **every second Friday for all subcontractors**
8 **I'm using, but sometimes when a subcontractor**
9 **let's say is asking me he needs quicker**
10 **money, I would go out of my way to pay them**
11 **quicker.**

12 Q. Aide from the checks that you had, you
13 would have issued to Exterior Pro, were there
14 any other documents which would evidence the
15 work or the amount paid to Exterior Pro for
16 the work they performed on 10 Quickway Road?

17 **A. Ask it again please, your question,**
18 **because I don't understand.**

19 Q. Sure.

20 You said you paid them by check,
21 correct?

22 **A. Yes.**

23 Q. In addition to the checks, are there
24 any other documents that you maintain which
25 would show the amount of money that Builders

1 Wolf Wercberger

2 Choice paid to Exterior Pro for the work that
3 Exterior Pro performed on the 10 Quickway
4 Road project?

5 **A. So you're questioning me if I know how**
6 **much money I paid for Exterior Pro for the**
7 **project at 10 Quickway?**

8 Q. Well, I'm trying to find out if there
9 are any documentation, if there's any
10 documentation that you would have which would
11 show that?

12 **A. No.**

13 Q. Builders Choice would submit invoices
14 to Noam, correct?

15 **A. Yes.**

16 Q. Would those invoices cover the amounts
17 that Builders Choice paid to Exterior Pro?

18 **A. So again, Noam is not involved with**
19 **subcontractors and what I am paying for my**
20 **crews, Noam is hiring Builders Choice,**
21 **Builders Choice hires subcontractors so he's**
22 **not involved at all with my subcontractors.**

23 Q. Do you know if Noam hired any other
24 contractor aside Builders Choice for the 10
25 Quickway Road project?

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1 Wolf Wercberger

2 **A. I believe so. He did a building or**
3 **what the building we did roofing, he didn't**
4 **do it by himself. It didn't grow on a tree.**

5 Q. Was the work performed by Builders
6 Choice in connection with this project
7 limited to roofing and siding work?

8 **A. Again.**

9 Q. Was the work that Builders Choice
10 performed in connection with the 10 Quickway
11 Road project limited to roofing and siding
12 work?

13 **A. Yes.**

14 Q. Did Builders Choice have any employees
15 on the job in January or February 2020 at 10
16 Quickway Road?

17 **A. January?**

18 Q. In 2020 when you were working on the
19 10 Quickway Road project, did Builders Choice
20 have any workers on-site, supervisors,
21 anything of that nature?

22 **A. Not what I recall at this moment.**

23 **Just a quick second.**

24 **(Whereupon, a short recess was**
25 **taken.)**

1 **Wolf Wercberger**

2 **A. Okay, thank you.**

3 Q. Can you see Exhibit J?

4 (Whereupon, Exhibit J is shared
5 with all parties via videoconference.)

6 Q. Did you have any involvement with
7 insurance issues on behalf of Builders Choice
8 in January of 2020?

9 **A. What issue?**

10 Q. Well, were you responsible for
11 purchasing general liability insurance on
12 behalf of Builders Choice?

13 **A. Yes.**

14 Q. What was the nature of your
15 involvement?

16 **A. I called up my agent and asked him for**
17 **insurance.**

18 Q. Who was your agent at that time?

19 **A. M&D Brokerage.**

20 Q. M&B?

21 **A. M&D Brokerage.**

22 Q. Is there a name of an agent that you
23 dealt with over there at that time?

24 **A. The secretaries.**

25 Q. Do you see what we marked as Exhibit J

1 Wolf Wercberger

2 is a binder confirmation from Admiral
3 Insurance Company, do you see it says to R-T
4 Specialty, did you ever have any direct
5 communications or discussions with R&T
6 Specialty?

7 **A. No.**

8 Q. Do you know who R&T Specialty is?

9 **A. No.**

10 Q. Do you maintain any insurance files in
11 your office?

12 **A. Files like?**

13 Q. Well, do you keep copies of policies,
14 copies of binders?

15 **A. I attach it to my checks when I'm**
16 **accepting.**

17 Q. When you say checks, check to who?

18 **A. To the insurance company. I paid for**
19 **Admiral probably \$130,000 a year so I attach**
20 **it to the checks.**

21 Q. So do you maintain now in your office
22 copies of any policies or other
23 correspondence with Admiral Insurance
24 Company?

25 **A. I can check, I have no idea.**

1 **Wolf Wercberger**

2 Q. Prior to January 15, 2020, who was
3 Builders Choice commercial liability insurer?

4 **A. I don't know.**

5 Q. It was someone other than Admiral,
6 correct?

7 **A. I'm not sure.**

8 Q. Prior to January 15, 2020, did you
9 have any discussions with your broker
10 regarding the terms and conditions of the
11 policy that you were purchasing?

12 **A. If I go through every detail, no.**

13 Q. Do you recall if you received a copy
14 of this binder confirmation on or around
15 January 15th, 2020?

16 **A. Don't know.**

17 Q. Do you recall if in the past if you
18 received any similar documents entitled
19 binder confirmations?

20 **A. Don't know. To be honest, the only**
21 **thing I know with insurance is that I have to**
22 **pay the bill and if I don't pay, it gets**
23 **lapsed. This is what I know about insurance.**

24 Q. I see there's a name K. Johnson senior
25 underwriter at Admiral insurance, did you

1 Wolf Wercberger

2 ever have any telephone calls or written
3 communications with K. Johnson or anyone else
4 at Admiral regarding the purchase of the
5 policy that incepted on January 15, 2020?

6 **A. No.**

7 Q. Did you ever have any discussions with
8 your broker regarding terms, conditions and
9 exclusions that are contained in your policy?

10 **A. No.**

11 Q. Do you recall any discussions with
12 your broker regarding the need to reduce the
13 premiums for your general liability policy?

14 **A. By saying reduce the premiums, what do**
15 **you mean?**

16 Q. Well, to pay less a premium than you
17 had in previous policy years.

18 **A. I wish, it only goes up.**

19 Q. Say that again, please.

20 **A. I wish it should be cheaper, it only**
21 **goes up the price. Do you have anything that**
22 **gets cheaper those days?**

23 Q. Do you have any specific recollection
24 as to why you would have changed your
25 liability insurer in 2020?

1 Wolf Wercberger

2 **A.** I don't know for sure, but one of
3 those years my previous company ended
4 liability coverage for roofing contractors,
5 but I'm not sure that it was this year, could
6 be it's the year before that. I know one of
7 the past years my insurance company sent me a
8 letter that they are not insuring anymore
9 roofing contractors.

10 **Q.** Do you recall which insurer that was?

11 **A.** No. Maybe Colonial, but I'm not sure.

12 **Q.** Do you know who made the decision to
13 purchase insurance for the 2020 policy year
14 from Admiral Insurance Company?

15 **A.** The broker.

16 **Q.** That would be M&D?

17 **A.** Yes.

18 **Q.** Again, do you recall any discussions
19 with your broker regarding any exclusions or
20 conditions that were contained in the 2020
21 Admiral policy?

22 **A.** Not what I recall at the moment.

23 **Q.** If you look here a second from the
24 bottom there's an endorsement it's called no
25 coverage applies if contractor conditions not

1 Wolf Wercberger

2 met; do you see that?

3 **A. Yes.**

4 Q. Do you know if that was, that
5 endorsement was in any of your prior
6 liability policies that you purchased?

7 **A. No idea. I never read all this, all**
8 **this -- I never read all this. The only**
9 **thing I read in the policy is how much I have**
10 **to pay so when you scroll to the bottom, you**
11 **gotta check the price.**

12 Q. How would you learn that coverage was
13 in effect with Admiral Insurance Company?

14 **A. It draft the bank.**

15 Q. Say that again, please.

16 **A. It draft the bank account, they take**
17 **out money from my bank account.**

18 Q. Did you get any emails or letters or
19 other correspondence from either your broker
20 or from Admiral confirming coverage?

21 **A. I don't understand the question.**

22 Q. Sure.

23 This document is dated January 15,
24 2020 and it's called binder confirmation, do
25 you have an understanding of what binder

1 Wolf Wercberger

2 confirmation means.

3 **A. Probably that I have insurance.**

4 Q. How would you have been notified that
5 you have insurance with Admiral Insurance
6 Company on or around January 15, 2020?

7 **A. As I said, they drafted my account, I**
8 **called the broker when I need a certificate**
9 **and they are not refusing to give me the**
10 **certificate, I know that I have insurance.**

11 Q. So just to be clear now, you don't
12 recall receiving a copy of the binder
13 confirmation; is that correct?

14 **A. Not what I recall, but if you read**
15 **correctly go on top of the page where was**
16 **this sent to, you see to, RT Specialty my**
17 **company name is Builders Choice of New York.**

18 Q. Do you know if RT Specialty would have
19 sent a copy of the binder to M&D or to
20 Builders Choice directly?

21 **A. I don't have access to M&D's computer.**

22 Q. I understand that, but do you know
23 whether or not M&D would have sent you a copy
24 of --

25 **A. Not that I recall.**

1 **Wolf Wercberger**

2 Q. If they had sent you a document like
3 this, is there a file that you would have
4 kept it in or electronically, an email folder
5 that you would have kept it in?

6 A. No, I just let it go.

7 Q. On the next exhibit I'm going to he
8 show you, Exhibit A is a copy of the Admiral
9 insurance policy.

10 (Whereupon, Exhibit A is shared
11 with all parties via videoconference.)

12 Q. Obviously it's lengthy and I'm not
13 going to show you the whole thing, but did
14 you ever receive a complete copy of the
15 Admiral insurance policy?

16 A. One second. One second, I gotta call
17 to manage to cut off the ambulance --one
18 second, give me a second. He's coming in,
19 give me a second. Okay, so we can talk for
20 now. It's going to happen again, give me a
21 second.

22 MR. MCALOON: Wolf, why don't
23 you answer his question and why don't
24 we can take a five-minute break?

25 THE WITNESS: Okay.

1 Wolf Wercberger

2 MR. MCALOON: Did you receive a
3 copy of the Admiral policy, do you
4 know?

5 THE WITNESS: Not sure.

6 MR. MCALOON: Do you want to
7 take a break?

8 THE WITNESS: If you want to
9 take a break, I have no problem to go
10 on.

11 MR. MCALOON: Let's take a
12 five-minute break so you can sort out
13 what you're doing.

14 THE WITNESS: Okay.

15 (Whereupon, a short recess was
16 taken.)

17 Q. You said before you weren't sure if
18 you received a copy of the Admiral policy; is
19 that correct, a full copy?

20 **A. I don't recall.**

21 Q. If you had received a copy, where
22 would that be maintained?

23 **A. In office with a whole bunch of**
24 **papers.**

25 MR. MANIATIS: To the extent

1 Wolf Wercberger

2 that you have an insurance file with
3 respect to the 2020 policy year I'm
4 going to call for production of that.

5 (REQUEST NOTED)

6 Q. Before we leave this, just going back
7 to the subcontractor rider agreement, when
8 you signed that agreement, were there any
9 provisions or terms in that agreement that
10 you did not understand or were not clear to
11 you?

12 A. **The general agreement we sign it when**
13 **we get into a job.**

14 Q. My question to you is, were there any
15 terms or conditions or provisions in there
16 that you did not understand or were not clear
17 to you at the time you signed it?

18 A. **To be honest, nothing is clear to me,**
19 **it's just a standard form. It has to be**
20 **signed in order to get on to the job, we sign**
21 **to go on to the job.**

22 Q. Did you ever express to anyone at Noam
23 that certain conditions or terms of the
24 subcontractor rider were not clear to you?

25 A. **No, we didn't even discuss it.**

1 **Wolf Wercberger**

2 Q. Just looking at the first couple of
3 pages of the Admiral policy which we've
4 marked as Exhibit A, does that look familiar
5 to you?

6 A. No. One thing which looks familiar to
7 me, go back, please. This number that I made
8 my payments 184,000.

9 Q. How were you billed for the premium on
10 this policy?

11 A. I have to give them a down payment and
12 then they draft my account every month.

13 Q. So you pay them installments, when you
14 say "they," is payment made through the
15 broker or is it made directly to Admiral?

16 A. ISBS, a company probably they're a
17 financing company for Admiral or for someone,
18 I don't know.

19 Q. Prior to the issuance of this policy,
20 did you have any discussion or written
21 communication regarding any of the terms and
22 conditions in this policy?

23 A. No.

24 Q. Referring now to Bates page ADM000073
25 and it's the endorsement and title note

1 Wolf Wercberger

2 coverage applies if contractor conditions not
3 met, do you recall at any time prior to the
4 purchase of the Admiral policy reviewing this
5 endorsement?

6 **A. This endorsement, no.**

7 Q. When did you first become aware that
8 the Admiral policy contained a no coverage
9 applies if contractor conditions not met
10 endorsement?

11 **A. Again.**

12 Q. When did you first become aware that
13 this endorsement was in the Admiral policy?

14 **A. When they sent me a letter that they**
15 **are suing me.**

16 Q. Again, do you recall any specific
17 discussions at any time with anyone, either
18 your insurance broker or anyone at Admiral
19 regarding this endorsement?

20 **A. Not -- don't recall.**

21 Q. Do you recall if a copy of the Admiral
22 policy was ever provided to Noam?

23 **A. My policy to Noam?**

24 Q. Yes.

25 **A. No.**

1 **Wolf Wercberger**

2 Q. Did you have to provide Noam with a
3 certificate of insurance?

4 **A. Yes.**

5 Q. Are you familiar with the construction
6 project at 10 Quickway Road?

7 **A. By saying familiar, what do you mean?**

8 Q. Well, what was the nature of the
9 project at 10 Quickway Road --

10 MR. MANIATIS: Let me withdraw
11 that.

12 Q. What were the services that Builders
13 Choice of New York was to provide to Noam in
14 connection with the construction project at
15 10 Quickway Road?

16 **A. Sorry, but I don't know if you**
17 **remember, but this is for the fifth time**
18 **you're asking me the same question. We doing**
19 **roofing and siding. Same goes to 10**
20 **Quickway, same goes to anywhere else. So for**
21 **the fifth time, yes, we did roofing and**
22 **siding on 10 Quickway.**

23 Q. Do you know who own the premises?

24 **A. This I answered as well, no.**

25 Q. Was this a residential or a commercial

1 Wolf Wercberger

2 property or something else?

3 **A. A condominium.**

4 Q. Do you recall how Builders Choice was
5 first contacted by Noam to work on this
6 project?

7 **A. No.**

8 Q. Do you know if there was a bidding
9 process to get this job?

10 **A. No.**

11 Q. No, you don't know or no, there
12 wasn't?

13 **A. I don't know.**

14 Q. Who would have been the person at
15 Builders Choice that would have had the first
16 contact with Noam regarding this project?

17 **A. Me.**

18 Q. Did Builders Choice actually perform
19 any of the work at 10 Quickway Road?

20 **A. If our employees alone?**

21 Q. Yes.

22 **A. No, we only use subcontractors.**

23 Q. Were you provided any plans or
24 specifications by Noam in connection with
25 this project?

1 Wolf Wercberger

2 **A. Probably.**

3 Q. Can you specifically describe what
4 services Exterior Pro was to provide in
5 connection with this project?

6 **A. Roofing and siding repairs.**

7 Q. Repairs, was this a new construction
8 or was this a conversion?

9 **A. New construction.**

10 Q. You said that Builders Choice may have
11 had other roofing and siding subcontractors
12 on this site; is that correct?

13 **A. Yes.**

14 Q. What I'm trying to sort out is, what
15 was Exterior Pro's role in connection with
16 roofing and siding compared to the other
17 subcontractors involved?

18 **A. So when a new building is being built,**
19 **not all the time everything is ready. Like**
20 **for example, it's missing a window, it's**
21 **missing a door. It's missing a deck so when**
22 **the building is done, we have to send back**
23 **guys to finish off the building so that day**
24 **Exterior Pro went and finished off the**
25 **building. Clear enough?**

1 **Wolf Wercberger**

2 Q. Very good.

3 How did you first contact Exterior Pro
4 in connection with this project, was there a
5 solicitation for bids or did you just phone
6 them up or something else?

7 **A. He's a subcontractor that did work for**
8 **me on a daily basis so we told them we have**
9 **another job, he did good on the first one**
10 **we'll give him 10 Quickway.**

11 Q. Was Exterior Pro provided any
12 documents in connection with the work that
13 they were to perform on this job?

14 **A. No.**

15 Q. How did they know what to do when they
16 got to the job site?

17 **A. I spoke with them on the phone.**

18 Q. Were you ever on the job site in
19 January and February 2020?

20 **A. January I don't remember, February**
21 **that day for sure not.**

22 Q. When you say "that day," you're
23 referring to the date of the accident of the
24 Valdivieso employee?

25 **A. I don't call it an accident, the day**

Wolf Wercberger

that they caused me headache with papers.

Q. When did Exterior Pro commence their work on this project, was it before or after January 1, 2020, the date of that subcontract agreement?

A. **After. Nobody can work by us without this subcontract agreement, period.**

Q. Do you know if they were on the job before January 15, 2020 which would have been the date that the Admiral policy went into effect?

A. **I don't -- not what I know of.**

Q. When did the 10 Quickway Road project start?

A. **I don't recall.**

Q. But it started back in 2019; is that correct?

A. **I'm not sure.**

Q. Did it start prior to the date of that subcontract agreement rider that we looked at earlier which was January 5th, 2019?

A. **For sure not.**

Q. In addition to the subcontractors that you hired, were there other trades on-site in

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1 Wolf Werchberger

2 February 2020?

3 **A. I have no idea, I wasn't there.**

4 Q. Did Exterior Pro purchase general
5 liability insurance naming Builders Choice as
6 an additional insured?

7 **A. Yes. Nobody works for us without this**
8 **insurance, supplying us insurance we're**
9 **additional insured.**

10 Q. Could you please describe what this
11 document is?

12 (Whereupon, a document is
13 shared with all parties via
14 videoconference.)

15 **A. Liability insurance naming us as**
16 **additional insured.**

17 Q. That's a certificate of liability
18 insurance --

19 **A. Yes.**

20 Q. -- to Exterior Pro Builders?

21 **A. No, from Exterior Pro to Builders**
22 **Choice of New York.**

23 Q. Do you see the date 5/23/2019 on the
24 upper right?

25 **A. Yes.**

1 **Wolf Wercberger**

2 Q. Do you know if this certificate of
3 liability insurance was provided in
4 connection with other subcontract assignments
5 that you had given to Exterior Pro?

6 **A. I don't understand the question.**

7 Q. Sure.

8 This certificate of insurance just
9 wasn't for the 10 Quickway Road project,
10 correct?

11 **A. Of course not.**

12 Q. No, it was for projects that may have
13 taken place or started prior to the 10
14 Quickway Road project?

15 **A. Of course.**

16 Q. Do you recall having any discussions
17 with anyone at Exterior Pro Builders
18 regarding the addition of Builders Choice of
19 New York as an additional insured on their
20 policy?

21 **A. Of course, I asked them to do that.**

22 Q. It says, insurance that when required
23 by written contract and that would be the
24 standard subcontract agreement that you had
25 entered into with Exterior Pro that we looked

1 Wolf Wercberger

2 at earlier?

3 **A. Yes.**

4 Q. Did you ever ask anyone at Exterior
5 Pro whether or not there were any exclusions
6 or limitations in their policy which would
7 affect your rights or status as an additional
8 insured?

9 **A. No, the only item which what I know is**
10 **to ask insurance and to name us as additional**
11 **insured.**

12 Q. Were you ever told that the -- again,
13 this would be prior to --

14 MR. MANIATIS: Withdraw that.

15 Q. On or around May 23rd, 2019, were you
16 ever told by either Exterior Pro or any of
17 the insurance brokers that the policy
18 contained an employee exclusion?

19 **A. Sorry, again.**

20 Q. Sure.

21 Were you ever told by either Exterior
22 Pro or Kaplan Insurance Agency that the
23 Exterior Pro policy contained an employee
24 exclusion?

25 **A. No.**

1 **Wolf Wercberger**

2 Q. Did you ever ask for a complete copy
3 of the Exterior Pro policy where you were
4 listed as additional insured?

5 A. **Not what I recall.**

6 Q. When you say not that you recall, if
7 you had requested a copy of the policy, would
8 that be maintained in Builders Choices file
9 somewhere?

10 A. **No.**

11 Q. Where would it be maintained if you
12 had requested that?

13 A. **I just usually never asking for a**
14 **policy from a subcontractor.**

15 Q. Have you ever asked for a policy from
16 a subcontractor?

17 A. **Usually not, no.**

18 Q. You say usually, were there instances
19 where you might have asked for any --

20 A. **Not what I recall.**

21 Q. -- a complete policy?

22 A. **Not what I recall.**

23 Q. If you look at the top of the
24 certificate --

25 A. **Yes.**

1 **Wolf Wercberger**

2 Q. -- it says, this certificate is issued
3 as a matter of information only and confers
4 no rights upon the certificate holder, the
5 certificate does not affirmatively or
6 negatively amend, extend or alter the
7 coverage afforded by the policies below, the
8 certificate of insurance does not constitute
9 a contract between the issuing insurers,
10 authorized representative or producer and the
11 certificate holder.

12 Did you ever read that language prior
13 to -- at the time you received the
14 certificate?

15 **A. No, the only items when I look at**
16 **policy is the name, Exterior Pro, has a**
17 **policy number, additional insured, my name,**
18 **one-million, two-million, case closed.**

19 Q. Do you recall any discussions that you
20 may have had regarding that paragraph I just
21 read with either the broker or anyone at
22 Exterior Pro?

23 **A. No, I didn't have no discussion about**
24 **it with anyone about this wording.**

25 Q. When did the accident involving

1 Wolf Wercberger

2 Polivio Valdivieso occur?

3 **A. I don't even know who the guy is.**

4 Q. Do you know that the -- he's the
5 plaintiff in the underlying lawsuit against
6 you; is that correct?

7 **A. No idea, could be.**

8 Q. Do you know if he was an employee of
9 Exterior Pro?

10 **A. No idea. A trouble maker, for sure he**
11 **is.**

12 Q. When did you first become aware of the
13 accident?

14 **A. When I got the pack of papers.**

15 Q. When you say "the pack of papers," you
16 mean the lawsuit?

17 **A. Yeah.**

18 Q. When you received a copy of the
19 lawsuit, did you have any discussions with
20 anyone at Exterior Pro as to what happened?

21 **A. Yes, he start telling me stories, but**
22 **I don't know what.**

23 Q. What did he tell you about the
24 accident?

25 **A. A guy got hit, he's not -- it's not**

1 **Wolf Wercberger**

2 **too bad, he's going to get back better, he's**
3 **going to be here, he's going to come, all**
4 **kind of stories.**

5 Q. This was -- you had this discussion
6 with Manny?

7 **A. Yes.**

8 Q. Did you have any discussions with
9 anyone else regarding the accident that took
10 place on the job site?

11 **A. No.**

12 Q. Was this project ever completed, the
13 10 Quickway Road?

14 **A. What is that?**

15 Q. Was the project ever completed?

16 **A. Yes, sure.**

17 Q. When was it completed?

18 **A. Don't know.**

19 Q. What we previously marked as Exhibit B
20 is a copy of the summons and complaint in the
21 underlying action Polivio Valdivieso versus
22 Noam Estates R LLC, Builders Choice of New
23 York Inc. and Upstate Roofing and Siding
24 Inc.?

25 (Whereupon, Exhibit B is shared

1 Wolf Wercberger
2 with all parties via videoconference.)
3 **A. Yes.**
4 Q. Is this a copy of the complaint that
5 you said you had received?
6 **A. It looks like, I don't remember what**
7 **it says over there, but it looks like.**
8 Q. Were you served personally with a copy
9 of this complaint or some other manager?
10 **A. I don't remember, I think it was in**
11 **the mail, but I'm not sure.**
12 Q. Do you recall when you were served
13 with a copy of this?
14 **A. No.**
15 Q. What did you do when you received a
16 copy of the complaint?
17 **A. Took it to my agent.**
18 Q. When you say took it to them, you
19 physically took it to them or you mailed it
20 to them or emailed it to them?
21 **A. I don't remember.**
22 Q. That would have been M&D?
23 **A. Yes.**
24 Q. Did you have any discussions with M&D
25 regarding the complaint or what they were

1 Wolf Wercberger

2 going to do with the complaint?

3 **A. No. I believe they are sending it to**
4 **the company.**

5 Q. How soon after you received the
6 complaint did you send it to your broker?

7 **A. I mean right away.**

8 Q. Were you copied on any correspondence
9 between the broker and Admiral Insurance
10 Company which placed Admiral on notice of
11 this claim?

12 **A. No.**

13 Q. In addition to the lawsuit, did you
14 receive any documentation from the broker
15 regarding your claim against Admiral?

16 **A. Don't remember.**

17 Q. Do you recall if you had any
18 discussions with anyone at Noam regarding the
19 accident or lawsuit?

20 **A. If I spoke with Noam about the**
21 **lawsuit?**

22 Q. What discussions did you have with
23 him?

24 **A. I don't remember having any**
25 **discussion, I'm just trying to rephrase my**

1 **Wolf Wercberger**

2 **memory. No, I don't remember that.**

3 Q. Do you recall if you sent a copy of
4 the complaint to Exterior Pro for them to
5 defend and indemnify you in connection with
6 this accident?

7 A. **I believe the agent did.**

8 Q. Do you recall any discussions that you
9 had with anyone at Exterior Pro regarding
10 them defending you or indemnifying you in
11 connection with the lawsuit?

12 A. **I think they sent a letter that they**
13 **are declining coverage, if I remember**
14 **correctly, but I'm not sure.**

15 Q. I'm asking for your discussions with
16 Exterior Pro, we'll get to the letters in a
17 minute, but do you remember phoning up anyone
18 at Exterior Pro and saying you guys should be
19 paying this?

20 A. **I was kind of in shock with all these**
21 **documents, I called them, but I don't know**
22 **who has to pay. I'm not involved, I have no**
23 **idea who has to pay.**

24 Q. Do you recall if you submitted any
25 documents or tendered the defense and

1 Wolf Wercberger

2 indemnification of the lawsuit directly to
3 Evanston Insurance (phonetic spelling).

4 **A. I gave it to the broker, so the broker**
5 **might have sent it this them.**

6 Q. Did there come a time when you had any
7 discussions with any investigator that was
8 sent over by Admiral Insurance Company?

9 **A. Investigator?**

10 Q. Investigator.

11 **A. Once I had a discussion here in the**
12 **office I think, I'm not -- I don't remember**
13 **even when it was or who it was, but once I**
14 **think someone came to my office.**

15 Q. Does the name Peter Decarlo sound
16 familiar?

17 **A. Yes.**

18 Q. Did you give Mr. Decarlo an oral
19 statement as to what you knew regarding the
20 accident?

21 **A. I don't remember.**

22 Q. Did you give the investigator any
23 documents?

24 **A. The same documents, the same**
25 **certificate, the same everything, if I gave**

1 **Wolf Wercberger**

2 **him, I'm not sure but if I gave him, I gave**
3 **him everything the same.**

4 Q. Exhibit F that we put up on the screen
5 is a September 15, 2020 letter from Admiral
6 insurance group to yourself.

7 (Whereupon, a document
8 is shared with all parties via
9 videoconference.)

10 Q. Do you recall receiving this letter on
11 or around September 15th, 2020?

12 **A. I don't recall, but I probably**
13 **received it, all these insurance documents I**
14 **kept on receiving the entire time since it**
15 **started this claim so I don't know this**
16 **letter, their letter, I have no clue.**

17 Q. Did Admiral agree to provide a defense
18 of Builders Choice in connection with the
19 underlying Valdivieso lawsuit?

20 **A. Again.**

21 Q. Sure.

22 Did Admiral agree to provide a
23 defense, to appoint attorneys and pay your
24 defense costs in connection with the
25 underlying Valdivieso lawsuit?

1 Wolf Wercberger

2 **A. I have no idea. I mean I had**
3 **insurance, I gave them the claim, I guess**
4 **they have to pay. For what am I paying**
5 **insurance for?**

6 Q. Do you see, Admiral has appointed the
7 following firm to defend your interests,
8 Barry, McTiernan and Moore?

9 **A. Whose that?**

10 Q. I'm asking you, are you familiar with
11 that law firm?

12 **A. I have no idea, someone calls me the**
13 **entire time from, Admiral, what is his name,**
14 **Tom something, I don't know who the guy is,**
15 **let me see his name, one second.**

16 Q. Do you recall any discussions with
17 Donald Gains at Admiral regarding the
18 substance of that --

19 **A. No, there's somebody here in the**
20 **email, one second. Let me see his name,**
21 **Thomas something, one minute.**

22 MR. MCALOON: Wolf, by counsel,
23 if Thomas Muldoon.

24 **A. Thomas Muldoon is working for Admiral,**
25 **no?**

1 **Wolf Wercberger**

2 MR. MCALOON: No, no, no.

3 Q. Do you know what firm Mr. Muldoon is
4 with?

5 A. **It says B-M-M-F-I-R-M.**

6 MR. MCALOON: So it's probably
7 Barry, McTiernan and Moore, right?

8 MR. MANIATIS: Yes.

9 Q. As far as you know, Admiral has been
10 paying Mr. Muldoon's fees?

11 A. **Somebody is paying him, not me.**

12 Q. Do you have an understanding of what a
13 reservation of rights is?

14 A. **Reservation usually I use when I**
15 **reserve a hotel.**

16 Q. In connection with insurance.

17 A. **Rights is always my wife is always**
18 **right, having regarding insurance I have no**
19 **clue. As I said, I am paying my bill, I**
20 **gotten insurance, I ask for a certificate, I**
21 **pick up my check. That's all I know. All**
22 **this language is for some kind of lawyers**
23 **that makes much more than a thousand dollars**
24 **an hour, I'm not these kind of guys.**

25 Q. Do you recall any discussions with

1 Wolf Wercberger

2 anyone regarding the no coverage applies if
3 contractor conditions are not met
4 endorsement, I'm just asking whether you had
5 any discussions with anyone about that
6 endorsement on or around September 15, 2020?

7 **A. One second, this paper says that**
8 **Admiral doesn't want -- wants to sue me,**
9 **right?**

10 Q. That's not what it says, but --

11 MR. MCALOON: Wolf, just answer
12 the question, did you have --

13 Q. The question was whether or not you
14 had any discussions with anyone after
15 receiving this letter in September 15, 2020
16 about the coverages and the endorsement that
17 are quoted in the letter?

18 **A. I don't recall the date --**

19 Q. Without --

20 **A. -- but when I called -- when I called**
21 **Sean, but I don't remember which date it was.**

22 MR. MCALOON: No, we're not --
23 don't talk about anything we talked
24 about.

25 Q. Is it fair to say that after September

1 Wolf Wercberger

2 15, 2020 you sought legal advise regarding
3 the letter? Yes or no, you don't have to
4 disclose any discussions.

5 **A. As I said, I don't know if it's the**
6 **date.**

7 Q. But at some point after receiving this
8 letter, did you seek legal advice?

9 **A. Yes.**

10 Q. Do you recall when that was?

11 **A. No.**

12 Q. Aside from counsel, did you ever ask
13 anyone, your broker, your insurer, anyone
14 else what a reservation of rights means?

15 **A. No.**

16 Q. Turning to exhibit -- what we marked
17 previously as Exhibit G, this is September
18 15th, 2020 letter from Admiral Insurance to
19 Exterior Pro tendering the defense and
20 indemnity of the claim.

21 (Whereupon, Exhibit G is shared
22 with all parties via videoconference.)

23 Q. First of all, have you seen a copy of
24 this September 15, 2020 letter?

25 **A. Could be, but I see it's for him, for**

1 **Wolf Wercberger**

2 **Exterior Pro, not for me.**

3 Q. Do you recall any discussions with
4 anyone that you have had at Exterior Pro
5 regarding the tendering of the defense and
6 indemnity of the underlying lawsuit?

7 **A. No.**

8 Q. Do you recall discussions that you may
9 have had with your broker regarding the
10 tendering of the defense indemnity of the
11 underlying lawsuit?

12 **A. Yes, I gave them all the documents.**

13 Q. When you say -- those were the
14 documents that you gave to the investigator
15 for Admiral?

16 **A. Yes.**

17 Q. Do you recall what documents
18 specifically you gave them?

19 **A. Certificate of insurance, the hold**
20 **harmless agreement, maybe some invoices which**
21 **I billed for Noam.**

22 Q. Do you recall if you gave them any
23 invoices from Exterior Pro?

24 **A. No.**

25 Q. Looking at what we previously marked

1 Wolf Wercberger

2 as Exhibit H is a December 1, 2020 letter
3 from Markel to Exterior Pro and a copy was
4 sent to Admiral insurance, RT Specialty and
5 Kaplan Insurance Agency, do you recall
6 receiving a copy of this letter on or around
7 December 1, 2020?

8 (Whereupon, Exhibit H is shared
9 with all parties via videoconference.)

10 **A. See it's for Exterior Pro, not for me.**

11 Q. But did there come a time that you,
12 somebody provided you a copy of this letter?

13 **A. Don't know.**

14 Q. How did you first come to learn that
15 Exterior Pro's insurer was disclaiming
16 coverage?

17 **A. I received some kind of letter which I**
18 **gave from my broker.**

19 Q. Was it a different letter than the one
20 we're looking at, Exhibit H?

21 **A. I don't know.**

22 Q. Did you have any discussions with
23 anyone at Exterior Pro regarding Markel's
24 disclaimer of coverage?

25 **A. No.**

1 **Wolf Wercberger**

2 Q. Did you have any understanding as to
3 what the basis of Markel's disclaimer of
4 coverage to Exterior Pro and to Builders
5 Choice was?

6 **A. No.**

7 Q. Did you have any discussions with
8 anyone at Markel regarding the disclaimer of
9 additional insured coverage to Builders
10 Choice?

11 **A. No.**

12 Q. Did you have any discussions with
13 anyone regarding challenging the disclaimer?

14 **A. No, I believe this is doing Admiral.**

15 Q. Exhibit I is a copy of a letter dated
16 January 7th from Neil Sambursky of Pillinger,
17 Miller, Tarallo to Builders Choice of New
18 York and it's entitled disclaimer subject to
19 defense, do you recall receiving a copy of
20 this letter on or around January 7, 2021?

21 **A. I see it's addressed to me so probably**
22 **I got it, I don't remember.**

23 Q. Did you have any discussions with
24 anyone, Mr. Sambursky or your broker or
25 Admiral Insurance regarding disclaimer

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1 Wolf Wercberger

2 subject to defense?

3 **A. I gave it to the broker.**

4 Q. When you say "the brother," would that
5 be M&D?

6 **A. Yes.**

7 Q. Did you have any discussions with
8 anyone at Exterior Pro regarding Admiral's
9 disclaimer of coverage --

10 **A. No.**

11 Q. -- subject to defense?

12 You said you gave it to the broker,
13 what discussions, if any, did you have with
14 the broker regarding the disclaimer subject
15 to defense dated January 7, 2021?

16 **A. Don't remember.**

17 Q. Do you know a Todd Mannschreck,
18 M-A-N-N-S-C-H-R-E-C-K?

19 **A. Who?**

20 Q. Tod Mannschreck, he works for one of
21 the brokers.

22 **A. Todd?**

23 Q. Todd, T-O-D-D.

24 **A. No, never heard, not what I know,**
25 **could be, I just don't recall the name.**

1 **Wolf Wercberger**

2 Q. As you sit here today, are you
3 contemplating any legal action against Markel
4 regarding the disclaimer?

5 **A. If I did any lawsuit against Markel?**

6 Q. Yes, challenging their disclaimer.

7 **A. Not at the moment what I know of, no.**

8 Q. As we sit here today, is Admiral still
9 paying for the defense and attorneys fees in
10 connection with the underlying Valdivieso
11 lawsuit?

12 **A. I believe so, I think I paid -- I**
13 **think I paid for them my -- whatchamacallit,**
14 **like they have a deductible or something they**
15 **have, this is what I had to pay for Admiral.**

16 Q. Did Builders Choice have to pay
17 anything or has incurred any costs in
18 connection with defending the underlying
19 Valdivieso lawsuit?

20 **A. Again, repeat that.**

21 Q. Sure.

22 Has Builders Choice incurred any costs
23 in connection with the defense or attorneys
24 fees in connection with the underlying
25 Valdivieso lawsuit?

1 Wolf Wercberger

2 **A. I have to pay for Sean.**

3 MR. MCALOON: He's talking
4 about the other lawsuit, Wolf.

5 Q. I'm not talking about this lawsuit,
6 I'm not talking about the lawsuit filed by
7 Admiral against Builders Choice, I'm talking
8 about the underlying lawsuit by Valdivieso
9 against Noam and Builders Choice, have you
10 incurred any costs or expenses in connection
11 with defending the Valdivieso lawsuit?

12 **A. Besides the deductible I think not.**

13 Q. How much is the deductible?

14 **A. I believe it's in all these papers you**
15 **showed me earlier, I believe it's in there**
16 **somewhere in the papers the deductible**
17 **amount, I don't remember.**

18 Q. Did you have to pay the deductible to
19 Admiral?

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25 (Continued on next page for Jurat.)

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A. I believe so.

MR. MANIATIS: I don't have any
further questions. Thank you very
much for your time, sir.

MR. MCALOON: Thanks very much.
I'll order a copy, Ann. Please give
me a copy of the transcript.

(Time noted: 12:45 p.m.)

WOLF WERCBERGER

Subscribed and Sworn to before me
this day of , -----

Notary Public

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C E R T I F I C A T E

I, ANN MULLIGAN, hereby certify that the Examination Before Trial of WOLF WERCBERGER, was held before me on the 5th day of May, 2022; that said witness was duly sworn before the commencement of his testimony; that the testimony was taken stenographically by myself and then transcribed by myself; that the party was represented by counsel as appears herein;

That the within transcript is a true record of the Examination Before Trial of said witness;

That I am not connected by blood or marriage with any of the parties; that I am not interested directly or indirectly in the outcome of this matter; that I am not in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of May, 2022.


ANN MULLIGAN



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